

**DR (Immigration Rules - Rule 297 (e):sole responsibility) Philippines
[2003] UKIAT 00109**

IMMIGRATION APPEAL TRIBUNAL

Heard at Field House
On: 29 July 2003
Prepared: 1 August 2003

29.10.03

Before

**Mr Andrew Jordan
Mr M. G. Taylor CBE
Mrs R. Faux JP**

Between:

Claimant

and

The Entry Clearance Officer in Jakarta

Respondent

For the Appellant: Mr J Walsh, Counsel
For the Secretary of State: Ms T Hart, HOPO

DETERMINATION AND REASONS

1. The claimant is a national of the Philippines who appeals against the decision of an adjudicator, Mr CB Kealy, following a hearing on 12 February 2003 dismissing the claimant's appeal against the decision of the Entry Clearance Officer refusing his application for leave to enter the United Kingdom for the purposes of settlement as the son of Mrs Leticia Ramada who has indefinite leave to remain here.
2. The claimant was born on 4 August 1984. He is now 18 years old. His mother, Leticia, formed a relationship with the claimant's father, also called Dominador Ramada, in 1971. She had five sons by him. Jubilito, Ruel (now aged 25), Rolando, the claimant and Darlit, born 23 June 1989, aged 14. The relationship with the claimant's father broke down.

The mother has always claimed that this was because of his brutal and drunken behaviour.

3. In 1991, the claimant's mother left the Philippines in order to find work. At that time, the claimant was aged seven and his younger brother was only two years old. Eventually, she travelled to the United Kingdom. From the time of her arrival until 2000, she worked as a domestic help. On 2 June 2000, she was granted indefinite leave to remain in the United Kingdom. In the same year, she married her present husband and now works for him in his shop. They have a house in Kenton. On being granted leave to remain, the claimant was able to travel freely to and from Manila. Within a short time of the grant, she travelled to Manila for the first time since 1991.
4. When the claimant left the Philippines, all of the children remained there. The claimant had made arrangements for them to be looked after by her mother and other family members. The claimant's father soon formed a relationship with another woman but continued to live in the same building as the children and the other relatives. At first, the principal carer was the claimant's maternal grandmother and her cousin, Romanita and Romanita's niece, Gillian.
5. The claimant's mother carried out her intention to use her income to support the children in the Philippines. A large proportion of her income was returned home. Various members of the family, including the children's father, were selected by the claimant to receive the funds. In 1999, however, the mother had ceased to send money to the father. By 1998, Ruel was aged about 24 and had married. He appears to have assumed the role of exercising prime responsibility in the household in the Philippines.
6. In 1994 or 1995, the claimant's mother purchased a house in which the claimant's father and his new family occupied the ground floor and the claimant and his younger brother lived with Ruel and his wife in one of the upper floors. One of the other sons and his wife and children occupied the other upper floor. Each of the families had their own entrance and kitchen facilities but all shared a communal WC.
7. On 23 August 2001, when the claimant was aged 17, an application was made for entry clearance. A similar, but separate, application was made in relation to Darlit. The claimant had finished school at the age of 15 and has remained unemployed since. He continued to live in the same house, divided as it appears to have been into three households but with a considerable amount of interchange between all the occupants. The claimant's father and stepmother did the cooking. See the answers to question 64 and 65 in the interview. The claimant shared a bedroom with his younger brother. The claimant's grandmother was also the house. The house has electricity, running water and a television. In paragraph 2.6 of his determination, the adjudicator refers to the claimant being close to his father.

8. In May 2002, a month before the Entry Clearance Officer made his decision, Ruel and his family moved to Cebu, in the provinces, accompanied by the claimant and his younger brother. Another brother lived nearby. Both of the properties had been purchased from the funds provided by the claimant's mother. In 2002, for example, the claimant's mother had provided the sum of £4,500, sufficient to enable Ruel to purchase the claimant's present home.
9. It is apparent that the claimant has been well looked after by these various members of his family since 1991, a period of about twelve years. He lives in exactly similar circumstances to his other four brothers. If this appeal fails, he will continue to live in what appears to be relatively comfortable circumstances. He is now an adult. His mother has carried out, to the full, the commitment she assumed in 1991 when she left the family in order to work abroad and earn sufficient income to support them far more comfortably than she could reasonably have hoped to achieve in the Philippines. In paragraph 2.5 of the determination, the adjudicator describes the accommodation in which the family lived in 1991 as a rented house in a squatter area of Manila. Contrast that with the position now. At least two of the sons have homes of their own, purchased by the mother, in the provinces. Two of his brothers work, or worked, as tricycle drivers. There does not appear to be any explanation why the claimant does not work.
10. Under paragraph 297 of HC 395, the Immigration Rules, the requirements to be met by a person seeking indefinite leave to enter the United Kingdom as the child of a parent settled in the United Kingdom includes the requirements in paragraphs 297 (i) (d), (e) and (f):
 - “(d) one parent is present and settled in the United Kingdom and the other parent is dead; or*
 - (e) one parent is present and settled in the United Kingdom ... and has had sole responsibility for the child's upbringing; or*
 - (f) one parent ... is present and settled in the United Kingdom ... and there are serious and compelling family or other circumstances which made exclusion of the child undesirable and suitable arrangements have been made for the child's care*
11. These are alternative provisions. It is sufficient if the claimant establishes one of the requirements. That said, given the facts as we have set them out above, it is clear that there are no serious or compelling family or other circumstances that render the claimant's exclusion from the United Kingdom undesirable.
12. The claimant approaches the application by seeking to establish that she has had *sole responsibility* for the claimant's upbringing. It has been said that the phrase is intended to reflect the situation where the chief parental responsibility for the child's upbringing rests to all intents and purposes with one parent. The parent claiming sole responsibility must

satisfactorily demonstrate that she has been the chief person exercising responsibility. It has long been recognised that sole responsibility cannot be interpreted too literally. See *Emmanuel v SSHD* [1972] Imm AR 69. Where a parent leaves a child in order to live and work elsewhere, it is inevitable that the child's day-to-day care will be entrusted to another person. That person will, as a matter of fact, have some responsibility for the welfare of the child. Depending on the child's age, that responsibility is likely to include providing food and clean clothes as well as ensuring that the child gets up in the morning, goes to school and goes to bed at night. Where the carer is paid for his services by the parent, it is easy to see that the parent himself is continuing to exercise responsibility, albeit vicariously through the actions of the paid worker. It is neither necessary nor usual for the carer to be paid for his services. In most cases, the person responsible for the child's day-to-day care will be a relative who does not receive payment although, as in the present case, the family as a whole may benefit from remittances from the parent abroad.

13. In *Nmaju v Entry Clearance Officer* [2001] INLR 26, the Court of Appeal considered the case of a mother whose children were looked after by their father when she came to the United Kingdom in 1988 until September 1996 when the father refused to continue to look after the children and left them. Thereafter, from September 1996 until November 1996 when entry clearance was refused, the children were looked after by a maid paid for by the mother. The Court of Appeal focused upon the period of 2 ½ months when the mother indisputably had sole responsibility for the children's upbringing. During this crucial period, there could only be two contenders for the role of the person with sole responsibility. It was the mother's paid employee, acting under the mother's express directions, or it was the mother herself. Not surprisingly, the Court of Appeal decided that it was the mother who had sole responsibility, rather than the maid. The Court of Appeal emphasised that the period of sole responsibility, although short, did not disqualify the mother.

14. In *Ramos (Suzara) v Immigration Appeal Tribunal* [1989] Immigration AR 148, (considered in paragraph 8 in *Nmaju*), Dillon LJ referred to the fact that the direction and control of upbringing are factors which are part of the total pattern of facts on which the adjudicator has to make his decision. Another matter was, of course, the extent of contact. In the present case, of course, the fact that the mother was probably not able to return to the Philippines until the grant of Indefinite Leave to Remain negatives any inference that might be drawn from the fact that she did not visit the children between 1991 and 2000. Importantly, Dillon LJ said:

"... the decision that has been made is the decision of the adjudicator. It is not for this court to make its own fresh decision of fact on the evidence as it appears from the papers. That is not the function on judicial review."

15. In *R v Immigration Appeal Tribunal, ex p. Mahmood* [1988] Imm AR121, (a copy of which was provided to us), Roch J considered the case of a

child who had been supported by the sponsor, his legal guardian. The sponsor was divorced from the child's mother. The child first lived with his mother and then with the sponsor's mother. The Tribunal concluded that from that time the sponsor's mother and an uncle had shared responsibility with the sponsor for the applicant's upbringing. The court found that financial support and legal guardianship were factors to be taken into account but that they were not conclusive. It was for the adjudicator to consider whether the sponsor parent can fairly be said to have remained ultimately in sole control of the child's upbringing. On the facts of that case, the nature of the shared responsibility did not amount to sole responsibility and the child failed to meet the requirements of the Immigration Rules.

16. There was very little evidence before the adjudicator in relation to ultimate responsibility. In his interview, the claimant was asked about who decided that the claimant cease schooling at the age of 15. In answer to question 28, the claimant said that he had decided it himself. When he had told his mother about his decision, it is apparent that she was angry. See the answer to question 36. Since then, the claimant has remained unemployed and there is little additional evidence of the exercise of responsibility over him.
17. The adjudicator clearly accepted, as we do, that the mother has transmitted significant amounts of money to her family in Manila. The adjudicator was entitled to infer that other family members were also earning and injecting funds into the family. The adjudicator also found that the father played some part in the household, in common with other members of the claimant's family. He also accepted that, for some years, the father has not been entrusted to handle funds provided by the mother. In particular, since the time when Ruel demonstrated sufficient maturity, it has been Ruel who has been permitted to handle funds from the United Kingdom, as well as having the day-to-day care of the claimant in his home.
18. It seems to us that the adjudicator came to the correct conclusion in paragraph 7.3 of the determination when he found that the mother was but one of several people who exercised responsibility for the claimant and his younger brother. The adjudicator did not attempt to belittle the role played by the mother in financing the family but decided that the actual responsibility for the younger children, including the claimant, has remained firmly in Manila and that she had not taken any greater degree of responsibility in more recent years save that when her own financial circumstances improved, she was able to send out greater sums of money. He concluded that there was no evidence that the mother took the important decisions about the younger children's upbringing because her involvement was largely confined to gathering wealth. He categorised her post-decision rehousing of the two elder boys as being entirely consistent with her previous conduct.
19. We agree with the adjudicator's approach to the consideration of sole responsibility. It cannot be said that he misdirected himself or that he

acted unfairly in the assessment he made of the relative contributions of the various family members.

20. At the hearing before us, we were told that a decision had been made in the separate appeal of the claimant's younger brother, Darlit. At a hearing on 19 May 2003, before Mr J M Lewis, adjudicator, Darlit's appeal was allowed. The hearing was conducted in the absence of a Home Office Presenting Officer. We have read the determination of the adjudicator, who concluded that the mother had exercised sole responsibility for the upbringing of Darlit since at least 1996. We are not, however, persuaded that the adjudicator's determination in Darlit's appeal, alters the conclusion we have reached in the claimant's appeal.

Decision: The claimant's appeal is dismissed.

Andrew Jordan
Vice President
1 August 2003